

Exhibit B

Nathan Freed Wessler

125 Broad Street
18th Floor
New York, NY, 10004

02/12/2020

CBP-2020-033428

Dear Nathan Freed Wessler:

This notice acknowledges receipt of your Freedom of Information Act (FOIA) request to U.S. Customs and Border Protection (CBP) received on 02/10/2020. Please use the following unique FOIA tracking number CBP-2020-033428 to track the status of your request. If you have not already done so, you must create a FOIAonline account at <https://foiaonline.gov>. This is the only method available to check the status of your pending FOIA request.

Provisions of the Act allow us to recover part of the cost of complying with your request. We shall charge you for records in accordance with the DHS FOIA regulations outlined on the DHS website, <https://www.federalregister.gov/documents/2016/11/22/2016-28095/freedom-of-information-act-regulations>. By submitting your request, you have agreed to pay up to \$25.00 in applicable processing fees, if any fees associated with your request exceed this amount, CBP shall contact you; however, the first 100 pages are free.

Due to the increasing number of FOIA requests received by this office, we may encounter some delay in processing your request. Consistent with 6 C.F.R. Part 5 §5.5(a) of the DHS FOIA regulations, CBP processes FOIA requests according to their order of receipt. Although CBP's goal is to respond within 20 business days of receipt of your request, FOIA does permit a 10-day extension of this time period in certain circumstances pursuant to 6 C.F.R. Part 5 §5.5(c).

CBP's FOIA Division is working hard to reduce the amount of time necessary to respond to FOIA requests. We truly appreciate your continued patience.

For additional information please consult CBP FOIA website please click on [FOIA Act Resources](#) or visit <http://www.cbp.gov/site-policy-notice/foia>.

Sincerely,

U.S. Customs and Border Protection

From: admin@foiaonline.gov
To: [Nathan Wessler](#)
Subject: FOIA Tracking Number Change for request CBP-2020-033428 (to CBP-OFO-2020-033428)
Date: Friday, March 6, 2020 12:59:01 PM

The FOIA request CBP-2020-033428 has had its Tracking Number changed to CBP-OFO-2020-033428. This is normally due to the request being transferred to another agency (for example, EPA to Dept. of Commerce) or to a sub-agency to process it. Additional details for this request are as follows:

- Old Tracking Number: CBP-2020-033428
- New Tracking Number: CBP-OFO-2020-033428
- Requester Name: Nathan Freed Wessler
- Date Submitted: 02/10/2020
- Long Description: Requesting records pertaining to the purchase of cell phone location data by the Department of Homeland Security, US Customs Border Protection and Immigration and Customs Enforcement

From: admin@foiaonline.gov
To: [Nathan Wessler](#)
Subject: FOIA Fee Waiver Disposition Reached for CBP-OFO-2020-033428
Date: Friday, March 6, 2020 12:59:45 PM

Your request for Fee Waiver for the FOIA request CBP-OFO-2020-033428 has been fully granted. Additional details for this request are as follows:

- Request Created on: 02/10/2020
- Request Description: Please see attached supporting file ("Re: FOIA Request Concerning Purchase and Use of Cell Phone Location Data") for full description of requested records (Section II: "Requested Records").
- Fee Waiver Original Justification: Please see attached supporting file ("Re: FOIA Request Concerning Purchase and Use of Cell Phone Location Data") for full description of requested records (Section IV: "Application for Waiver or Limitation of Fees").
- Fee Waiver Disposition Reason: N/A

From: admin@foiaonline.gov
To: [Nathan Wessler](#)
Subject: FOIA Expedited Processing Disposition Reached for CBP-OFO-2020-033428
Date: Thursday, April 23, 2020 2:00:38 PM

Your request for Expedited Processing for the FOIA request CBP-OFO-2020-033428 has been denied. Additional details for this request are as follows:

- Request Created on: 02/10/2020
- Request Description: Please see attached supporting file ("Re: FOIA Request Concerning Purchase and Use of Cell Phone Location Data") for full description of requested records (Section II: "Requested Records").
- Expedited Processing Original Justification: Please see attached supporting file ("Re: FOIA Request Concerning Purchase and Use of Cell Phone Location Data") for full description of requested records (Section III: "Application for Expedited Processing").
- Expedited Processing Disposition Reason: Does not meet requirements per DHS Regulations.

From: [HOWARD, PATRICK A](#)
To: [Ashley Gorski](#); [Nathan Wessler](#)
Subject: CBP FOIA Interim Response to CBP-2020-033428
Date: Thursday, May 7, 2020 9:21:16 PM
Attachments: [2020-033428 05-07-2020 Interim Response Letter.pdf](#)
[Final signed - DHS Commercial Data FOIA.pdf](#)
Importance: High

Ms. Gorski and Mr. Wessler,

Please see attached an Interim Response letter documenting CBP's efforts to response to FOIA Request CBP-2020-033428. I have also attached your original request for your reference. Per the response letter, if any responsive information is discovered, it will be responsive to part two of your request. CBP is in the process of identifying potentially responsive records.

In addition to this interim response, I am reaching out to discuss with you whether CBP FOIA may proactively remove withheld in full documents which are protected pursuant to 5 USC 552(b)(5), such as deliberative, attorney-client privileged, and attorney-work product privileged records. Please advise if you are agreeable to this proposal, so that our office may focus on records which will be producible in response to your request.

Please reach out to me at this address if there are any questions.

Thank you

Patrick A. Howard
Branch Chief, FOIA Division
Privacy and Diversity Office
Office of the Commissioner

May 7, 2020

Ms. Ashley Gorski
American Civil Liberties Union Foundation
125 Broad Street, 18th Floor
New York, NY 10004

Re: CBP-2020-033428

Dear Ms. Gorski:

This is an interim response to your FOIA request dated February 10th, 2020. You requested the following information:

1. All contracts, memoranda of understanding, letters of commitment, license, subscription agreements, and other agreements with vendors, including but not limited to Venntel, Inc., concerning government access to or receipt of data from commercial databases containing cell phone location information.
2. All communications with Venntel Inc. and all communications discussing or mentioning Venntel Inc.
3. All policies, procedures, guidelines, formal or informal guidance, advisories, directives, training materials, presentations, and memoranda concerning:
 - a. Access to commercial databases containing cell phone location information;
 - b. Acquisition, processing, retention, use, or dissemination of cell phone location information purchased from a commercial vendor;
 - c. The anonymization and de-anonymization of cell phone location information purchased from a commercial vendor;
 - d. The use of cell phone location information purchased from a commercial vendor in civil immigration enforcement actions;
 - e. The use of evidence in any court application, trial, hearing, or other proceeding that consists of, was obtained from, or was derived from cell phone location information purchased from a commercial vendor;
 - f. The use of “lead” or “tip” information that consists of, was obtained from, or was derived from cell phone location information purchased from a commercial vendor; and
 - g. The circumstances under which the government notifies defendants or respondents of the use of evidence that consist of, was obtained from, or was derived from cell phone location information purchased from a commercial vendor, including notice of the information’s provenance.

4. All formal legal analysis concerning access to commercial databases containing cell phone location information, or the acquisition, processing, retention, use, or dissemination of cell phone location information purchased from a commercial vendor, including the application of *Carpenter v. United States*, 138 S. Ct. 2206 (2018), to this information.
5. Records sufficient to show the volume of cell phone location data contained in the commercial databases for which DHS, CBP, and ICE have purchased access, and records sufficient to show the volume of data that the agencies have accessed from these databases.
6. Records sufficient to show the number of times each year that DHS, CBP, and ICE employees or contractors have accessed commercial databases containing cell phone location information, or have used location data obtained from such databases.
7. All records concerning the use of evidence in any court application, trial, hearing, or other proceeding that consists of, was obtained from, or was derived from cell phone location information purchased from a commercial vendor, including records concerning whether defendants or respondents received notice of the government's reliance on such information and its provenance.

As you are aware, *Carpenter v. United States*, 138 S. Ct. 2206 (2018), places certain requirements on the use of cell site data. The data provided to CBP by Venntel is not cell site or cell phone location data. The data provided by Venntel to CBP is also anonymized and does not identify a specific mobile device or subscriber. Accordingly, CBP is unable to respond to your request with respect to parts 1, 3a-3g, 4, 5, 6, and 7 as these parts specifically relate to the use of cell phone location data.

CBP will identify and assess for proper disclosure under the FOIA any communications as described in part 2 of your request.

Sincerely,

Patrick Howard

Patrick Howard
Branch Chief, FOIA Division
U.S. Customs and Border Protection, FOIA Division
Privacy and Diversity Office

From: [HOWARD, PATRICK A](#)
To: [Ashley Gorski](#); [Nathan Wessler](#)
Subject: Corrected Interim Response letter for CBP-2020-033428
Date: Friday, May 8, 2020 10:04:28 AM
Attachments: [2020-033428 05-08-2020 Interim Response Letter \(Corrected\).pdf](#)
Importance: High

Ms. Gorski and Mr. Wessler,

Please see attached a corrected Interim Response letter documenting CBP's efforts to response to FOIA Request CBP-2020-033428. CBP is in the process of identifying potentially responsive records.

In addition to this corrected interim response, I am reaching out to discuss with you whether CBP FOIA may proactively remove withheld in full documents which are protected pursuant to 5 USC 552(b)(5), such as deliberative, attorney-client privileged, and attorney-work product privileged records. Please advise if you are agreeable to this proposal, so that our office may focus on records which will be producible in response to your request.

Please reach out to me at this address if there are any questions.

Thank you

Patrick A. Howard
Branch Chief, FOIA Division
Privacy and Diversity Office
Office of the Commissioner

CORRECTED

May 8, 2020

Ashley Gorski
American Civil Liberties Union Foundation
125 Broad Street, 18th Floor
New York, NY 10004

Re: CBP-2020-033428

Dear Ms. Gorski:

This is a corrected interim response to your FOIA request dated February 10th, 2020, replacing the letter sent May 7, 2020. You requested the following information:

1. All contracts, memoranda of understanding, letters of commitment, license, subscription agreements, and other agreements with vendors, including but not limited to Venntel, Inc., concerning government access to or receipt of data from commercial databases containing cell phone location information.
2. All communications with Venntel Inc. and all communications discussing or mentioning Venntel Inc.
3. All policies, procedures, guidelines, formal or informal guidance, advisories, directives, training materials, presentations, and memoranda concerning:
 - a. Access to commercial databases containing cell phone location information;
 - b. Acquisition, processing, retention, use, or dissemination of cell phone location information purchased from a commercial vendor;
 - c. The anonymization and de-anonymization of cell phone location information purchased from a commercial vendor;
 - d. The use of cell phone location information purchased from a commercial vendor in civil immigration enforcement actions;
 - e. The use of evidence in any court application, trial, hearing, or other proceeding that consists of, was obtained from, or was derived from cell phone location information purchased from a commercial vendor;
 - f. The use of “lead” or “tip” information that consists of, was obtained from, or was derived from cell phone location information purchased from a commercial vendor; and
 - g. The circumstances under which the government notifies defendants or respondents of the use of evidence that consist of, was obtained from, or was derived from cell phone location information purchased from a commercial vendor, including notice of the information’s provenance.

4. All formal legal analysis concerning access to commercial databases containing cell phone location information, or the acquisition, processing, retention, use, or dissemination of cell phone location information purchased from a commercial vendor, including the application of *Carpenter v. United States*, 138 S. Ct. 2206 (2018), to this information.
5. Records sufficient to show the volume of cell phone location data contained in the commercial databases for which DHS, CBP, and ICE have purchased access, and records sufficient to show the volume of data that the agencies have accessed from these databases.
6. Records sufficient to show the number of times each year that DHS, CBP, and ICE employees or contractors have accessed commercial databases containing cell phone location information, or have used location data obtained from such databases.
7. All records concerning the use of evidence in any court application, trial, hearing, or other proceeding that consists of, was obtained from, or was derived from cell phone location information purchased from a commercial vendor, including records concerning whether defendants or respondents received notice of the government's reliance on such information and its provenance.

CBP is processing your request. Once responsive information, if any, is identified and assessed for proper disclosure under the FOIA, CBP will provide you with a written response.

With respect to parts 5 and 6 of your request, these categories fail to describe the records sought with sufficient particularity.

I appreciate your interest in U.S. Customs and Border Protection.

Sincerely,

Patrick Howard

Patrick Howard
Branch Chief
U.S. Customs and Border Protection, FOIA Division
Privacy and Diversity Office

From: [HOWARD, PATRICK A](#)
To: [Nathan Wessler](#); [Ashley Gorski](#)
Subject: RE: Corrected Interim Response letter for CBP-2020-033428
Date: Wednesday, June 3, 2020 8:23:24 AM

Great, thank you for the quick reply. I will be in touch if further questions come up.

Patrick A. Howard
Branch Chief, FOIA Division
Privacy and Diversity Office
Office of the Commissioner

From: Nathan Wessler <nwessler@aclu.org>
Sent: Tuesday, June 2, 2020 9:54 PM
To: HOWARD, PATRICK A <PATRICK.A.HOWARD@CBP.DHS.GOV>; Ashley Gorski <agorski@aclu.org>
Subject: RE: Corrected Interim Response letter for CBP-2020-033428

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Mr. Howard,

Thank you for being in touch about this. We are fine with your proposal: If the agency is not able to locate a final version of a document, but is able to locate several drafts, the ACLU is amenable to CBP producing only the most recent draft, rather than all of them.

Regards,
Nate

Nathan Freed Wessler
Senior Staff Attorney | Speech, Privacy, and Technology Project
American Civil Liberties Union
125 Broad Street, 18th Floor, New York, NY 10004
267-496-9038 (cell)
Pronouns: he/him

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From: HOWARD, PATRICK A <PATRICK.A.HOWARD@CBP.DHS.GOV>
Sent: Tuesday, June 2, 2020 9:27 PM
To: Nathan Wessler <nwessler@aclu.org>; Ashley Gorski <agorski@aclu.org>
Subject: RE: Corrected Interim Response letter for CBP-2020-033428

Mr. Wessler and Ms. Gorski,

I am sending this as a follow up while our offices continue to locate information concerning your Venntel FOIA request. One specific question was raised concerning drafts.

We understand that if we can locate a final version of a memo, policy, etc. that we do not need to produce a draft. If we are not able to locate a final version of a document, but are able to locate several drafts, are you amenable to CBP producing only the most recent draft, rather than all of them? With the understanding that if this situation should arise the documents may be heavily redacted, we still wanted to clarify that ultimately, you are only looking for one copy of each unique document, whether it is a final version or the last draft version.

Thank you

Patrick A. Howard
Branch Chief, FOIA Division
Privacy and Diversity Office
Office of the Commissioner

From: Nathan Wessler <nwessler@aclu.org>

Sent: Friday, May 22, 2020 7:17 AM

To: HOWARD, PATRICK A <PATRICK.A.HOWARD@CBP.DHS.GOV>; Ashley Gorski <agorski@aclu.org>

Subject: RE: Corrected Interim Response letter for CBP-2020-033428

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Patrick,

For records withheld in full under Exemption b(5), we would be fine with receiving a page count, as long as you identify not only the number of fully withheld pages, but also the number of separate documents withheld in full. So for example, we would be fine receiving a communication that said something like "CBP has withheld in full six documents, comprising a total of 12 fully withheld pages"

Thank you,
Nate

Nathan Freed Wessler
Senior Staff Attorney | Speech, Privacy, and Technology Project
American Civil Liberties Union
125 Broad Street, 18th Floor, New York, NY 10004
267-496-9038 (cell)
Pronouns: he/him

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From: HOWARD, PATRICK A <PATRICK.A.HOWARD@CBP.DHS.GOV>
Sent: Thursday, May 21, 2020 9:57 PM
To: Nathan Wessler <nwessler@aclu.org>; Ashley Gorski <agorski@aclu.org>
Subject: RE: Corrected Interim Response letter for CBP-2020-033428

Nate, thank you. Before I send this along, I want to make sure I clarify one point. On the potential B5 documents, the potential Attorney-Client e-mails, etc. These would likely be marked in full under B5, as we discussed. As agreed, we will not delete/remove these from the records batches we uncover, should any of them exist. Would you prefer that we give you a page count and set them aside in a folder on our end, or would you prefer to receive the blacked out pages? Again, this is assuming we uncover anything that falls into this category, I just want to make sure I know your preference before I pass this along to the office performing the search.

Thank you

Patrick A. Howard
Branch Chief, FOIA Division
Privacy and Diversity Office
Office of the Commissioner

From: Nathan Wessler <nwessler@aclu.org>
Sent: Thursday, May 21, 2020 11:18 AM
To: HOWARD, PATRICK A <PATRICK.A.HOWARD@CBP.DHS.GOV>; Ashley Gorski <agorski@aclu.org>
Subject: RE: Corrected Interim Response letter for CBP-2020-033428

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Dear Patrick,

Thank you for your time on the phone yesterday. As discussed, we are following up to clarify and memorialize our position on several points:

- 1) Regarding your question about records withheld in full under Exemption (b)(5), we consent to the agency excluding draft documents withheld under the deliberative process privilege, but only if the agency is able to identify and process a final version of the document. However, we do not consent to the exclusion of records that the agency seeks to withhold as subject to attorney-client or attorney-work-product privilege.
- 2) As discussed, we are willing to rephrase categories 5 and 6 of the request to address the agency's concern that records in those categories are not described with "sufficient

particularity.” Please accept the following substitute language. If the agency has further concerns, we would be pleased to discuss them.

Category 5: Records reflecting the volume of cell phone location data contained in the commercial databases for which DHS, CBP, and ICE have purchased access, and records reflecting the volume of data that the agencies have accessed from these databases. Such records may include electronic communications, memoranda, marketing materials, responses to requests for proposals, contracts, memoranda of understanding, and similar documents. In responding to this category of the Request, the agency need not produce multiple records reflecting the same information.

Category 6: Records reflecting the number of times each year that DHS, CBP, and ICE employees or contractors have accessed commercial databases containing cell phone location information, or have used location data obtained from such databases. Such records may include reports, presentations, procurement requests, memoranda, electronic communications between agency employees, with other agencies, or with private companies, and similar documents. In responding to this category of the Request, the agency need not produce multiple records reflecting the same information.

- 3) The ACLU wishes to clarify that references to “cell phone location information” in the Request are not meant to describe only the cell site location information (CSLI) generated and stored by cellular service providers when phones connect to the cellular network. (Such CSLI, which identifies the cellular tower and antenna that a phone was connected to at particular times, was the subject of the U.S. Supreme Court’s 2018 decision in *Carpenter v. United States*). Rather, the ACLU is primarily interested in records regarding location information calculated by applications (aka, apps) installed on phones, using those apps’ access to the phone’s built-in GPS chip. The longitude and latitude information derived from the phone’s GPS system is then traded or sold by the companies responsible for the apps to third-party companies that aggregate such GPS-derived location information and then sell it directly or indirectly to the government. The Request covers this information even if the agency considers it to be aggregated, de-identified, or anonymized.

Sincerely,
Nate

Nathan Freed Wessler
Senior Staff Attorney | Speech, Privacy, and Technology Project
American Civil Liberties Union
125 Broad Street, 18th Floor, New York, NY 10004
267-496-9038 (cell)
Pronouns: he/him

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From: HOWARD, PATRICK A <PATRICK.A.HOWARD@CBP.DHS.GOV>
Sent: Tuesday, May 19, 2020 10:51 AM
To: Nathan Wessler <nwessler@aclu.org>; Ashley Gorski <agorski@aclu.org>
Subject: RE: Corrected Interim Response letter for CBP-2020-033428

Mr. Wessler,

Thanks for your patience. Would tomorrow morning at 10:00 a.m. work for you?

Thank you

Patrick A. Howard
Branch Chief, FOIA Division
Privacy and Diversity Office
Office of the Commissioner

From: Nathan Wessler <nwessler@aclu.org>
Sent: Thursday, May 14, 2020 10:07 PM
To: HOWARD, PATRICK A <PATRICK.A.HOWARD@CBP.DHS.GOV>; Ashley Gorski <agorski@aclu.org>
Subject: RE: Corrected Interim Response letter for CBP-2020-033428

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Dear Mr. Howard,

We would appreciate the opportunity to speak with you about the pending issues in this request, including your query about documents withheld under exemption (b)(5). We are available next week at the following times:

Monday: 9-10:30, 12-2, 3-4

Tuesday: 3-5

Wednesday: 9:30-10:30

Please let us know if you can speak at any of these times, and we will provide a call-in number.

Thank you,
Nate

Nathan Freed Wessler
Senior Staff Attorney | Speech, Privacy, and Technology Project
American Civil Liberties Union
125 Broad Street, 18th Floor, New York, NY 10004
267-496-9038 (cell)

Pronouns: he/him

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From: Nathan Wessler
Sent: Friday, May 8, 2020 1:51 PM
To: HOWARD, PATRICK A <PATRICK.A.HOWARD@CBP.DHS.GOV>; Ashley Gorski <agorski@aclu.org>
Subject: RE: Corrected Interim Response letter for CBP-2020-033428

Dear Mr. Howard,

Thank you for being in touch about this matter. We would like to schedule a call to discuss the interim response and your inquiry about how to handle documents that may be withheld under Exemption (b)(5). Could you talk on Wednesday at any of the following times?: 9-10:30, 11:30-12, or 3-4? If those aren't convenient, I have blocks of availability on Monday and Tuesday.

Sincerely,
Nate

Nathan Freed Wessler
Senior Staff Attorney | Speech, Privacy, and Technology Project
American Civil Liberties Union
125 Broad Street, 18th Floor, New York, NY 10004
267-496-9038 (cell)
Pronouns: he/him

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From: HOWARD, PATRICK A <PATRICK.A.HOWARD@CBP.DHS.GOV>
Sent: Friday, May 8, 2020 10:04 AM
To: Ashley Gorski <agorski@aclu.org>; Nathan Wessler <nwessler@aclu.org>
Subject: Corrected Interim Response letter for CBP-2020-033428
Importance: High

Ms. Gorski and Mr. Wessler,

Please see attached a corrected Interim Response letter documenting CBP's efforts to respond to FOIA Request CBP-2020-033428. CBP is in the process of identifying potentially responsive records.

In addition to this corrected interim response, I am reaching out to discuss with you whether CBP FOIA may proactively remove withheld in full documents which are protected pursuant to 5 USC

552(b)(5), such as deliberative, attorney-client privileged, and attorney-work product privileged records. Please advise if you are agreeable to this proposal, so that our office may focus on records which will be producible in response to your request.

Please reach out to me at this address if there are any questions.

Thank you

Patrick A. Howard
Branch Chief, FOIA Division
Privacy and Diversity Office
Office of the Commissioner